

**आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम**

IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM BENCH, VISAKHAPATNAM

**श्रीदुव्वुस्त्रारएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष**

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &  
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. Nos. 431 & 432/Viz/2012  
(निर्धारणवर्ष/ Assessment Years: 2005-06 & 2007-08)

M/s. Arrdy Engineering  
Innovations (P) Ltd.,  
(Formerly known as M/s. Ardee  
Technologies (P) Ltd),  
Rourkela, Odisha.  
PAN: AABCA 4800 A  
(अपीलार्थी/ Appellant)

Vs. Asst. Commissioner of  
Income Tax,  
Circle-3(1),  
Visakhapatnam.

अपीलार्थीकीओरसे/ Assessee by  
प्रत्यार्थीकीओरसे/ Revenue by

(प्रत्यर्थी/ Respondent)  
Sri GVN Hari, AR  
Dr. Aparna Villuri, Sr. AR

सुनवाईकीतारीख/ Date of Hearing  
घोषणाकीतारीख/Date of  
Pronouncement

: 07/02/2024  
: 28/02/2024

**ORDER**

**PER S. BALAKRISHNAN, Accountant Member :**

Both the captioned appeals are filed by the assessee against the orders of the Ld. Commissioner of Income Tax (Appeals), Visakhapatnam in ITA Nos. 255/09-10/ACIT, Cir-3(1)/Vsp/12-13 and 256/09-10/Addl. CIT, R-3/VSP/12-13, dated

28/09/2012 arising out of the order passed U/s. 143(3) r.w.s 147 of the Income Tax Act, 1961 [the Act] for the AY 2005-06 and U/s. 143(3) of the Act for the AY 2007-08. Since the assessee has raised identical grounds of appeal involving the similar issues and therefore, both these appeals are clubbed, heard together and disposed off in this consolidated order. Firstly, we shall take up **ITA No.431/Viz/2012 (AY: 2005-06)** as a lead appeal:

2. Brief facts of the case are that the assessee-company carrying the business of production and sale of sensors, instruments and other related products which are used in Steel Industry, filed its return of income on 01/11/2005 admitting a total income of Rs. 3,74,72,380/- for the AY 2005-06. Thereafter the assessee filed a revised return of income revising the income to Rs. 3,75,63,580/-. While filing the return of income, the assessee has claimed weighted deduction U/s. 35(2AB) of the Act. The Ld. AO observed that there is an escapement of income with respect to deduction claimed U/s. 35(2AB) of the Act and issued notice U/s. 148 on 23/01/2009. During the assessment proceedings, the Ld. AO rejected the weighted deduction claimed by the assessee U/s. 35(2AB) of the Act apart from making

disallowance for Donation and for non-compliance U/s. 40(a)(ia) of the Act. The Ld. AO also added the difference of interest disclosed by the assessee thereby determining the assessed income at Rs. 4,14,52,484/-. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). Considering the submissions made by the assessee and relying on various judicial pronouncements, the Ld. CIT(A) partly allowed the appeal. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- "1. The Ld. CIT(A), Visakhapatnam erred in confirming the order of the Ld. AO in disallowing entire weighted deduction of Rs. 34,02,197/- claimed U/s. 35(2AB) of the Act on the ground that appellant was not carrying on research activity at the address mentioned in Form 3CL but incurred at Kalunga, Rourkela. Such disallowance has resulted in additional tax liability and interest thereon.*
- 2. The Ld. CIT(A) erred in confirming the order of the Ld. AO which was challenged by appellant on the ground that intimation of reassessment proceedings U/s. 147 is not permissible merely on the basis of change of opinion because the AO for subsequent AY 2006-07 had taken a view that weighted deduction U/s. 35(2AB) cannot be allowed.*
- 3. Even assuming (without admitting) that appellant was not eligible for weighted deduction U/s. 35(2AB) in respect of R&D expenditure towards field trials incurred at Rourkela (on the ground that the same was not covered under the definition of approved in-house R & D house and this is presently the subject matter of litigation before the Hon'ble AP High Court), the Ld. AO was not justified in denying even the plain 100% deduction for R & D expenditure in respect of both revenue and capital expenditure as provided U/s. 35(1)(i) and (iv) read with section 35(2)(ia) of the Act which does not provide for any such conditionality.*

*Therefore the Ld. CIT (A) erred in confirming the order of Ld. AO and ought to have at least allowed 100% deduction U/s. 35(1)&(iv) read with section 35(2)(ia) amounting to Rs. 22,68,131/- instead of the weighted deduction U/s. 35(2AB) as claimed by appellant.*

4. *Any other ground that the appellant may urge at the time of hearing."*

3. Further, the assessee has also raised **additional ground**

vide its petition dated 22/11/2016 which reads as under:

*"On the facts and circumstances of the case, whether the expenditure incurred by the appellant towards the Research and Development is eligible for deduction U/s. 35(1)(iv) of the Act?"*

4. Grounds No. 1 & 3 relate to disallowance of entire weighted deduction claimed U/s. 35(2AB) of the Act. The Ld. AR submitted that the assessee has incurred these expenses subject to the order of approval from the Ministry of Science and Technology, Government of India. The Ld. AR further submitted that he relevant Form-3CM and Form-3CL were enclosed in the paper book. Further, the Ld. AR also submitted that Form-3CM and Form-3CL contain the Registered Office address of the assessee where as the Ld. AO rejected the claim of weighted deduction stating that these expenses were incurred at Kalunga, Rourkela wherein such address was not mentioned in the Form-3CM and Form-3CL. The Ld. AR pleaded that the assessee may be allowed the normal deduction which was not disputed by the Ld. Revenue Authorities.



विद्युत प्रौद्योगिकी विभाग  
 अन्वेषण प्रौद्योगिकी विभाग  
 एन.ए.ए. भवन, नए दिल्ली-110016  
 GOVERNMENT OF INDIA  
 Ministry of Science & Technology  
 Department of Scientific & Industrial Research  
 Technology Division, New Mehrauli Road  
 New Delhi-110016

आवेदन संख्या: 100/2003-04  
 दिनांक: 10/01/2004  
 आदेश संख्या: 100/2003-04  
 दिनांक: 10/01/2004

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Report to be submitted by the prescribed authority to the Director, Income Tax Exemptions, s/s 35(2A)(B) of the Income Tax Act, 1961

1. Name and Address of the registered office of the company including Telex/Fax/Phone numbers:  
 M/s Aideo Business Services Pvt. Ltd.  
 9-36-4, Balaji Nagar,  
 Siripuram  
 Visakhapatnam - 530003 (A.P.)  
  
 Tel. No. 0891-2702852-53  
 Fax. No. 0891-2756507
2. Permanent Account Number (PAN) of the company: AADCA4800A.  
 Name and designation of the Principal Officer of the company:  
 Dr. G.V. Ramana, Director.
3. Nature of Business/activity of the company:  
 Manufacture / production of electronic quality control equipment and consumables.
4. Annual production of the eligible products of the company during the past three years.

Year	Rs. in lakhs
2002-03	1002.40
2003-04	730.14
2001-05	1002.50

5. Proposed objectives of scientific research contemplated by the company.  
 To indigenise imported components and control systems and to develop new quality control instruments, systems and processes.
6. Whether the nature of the business is related to the proposed objectives of the scientific research contemplated by the company. Yes.



7. Details of the nature of existing in-house Research and Development facilities, specifying whether the in-house Research and Development facility is adequate for carrying out scientific research.

The existing R&D facilities are adequate to carry out production of electronic quality control equipment and consumables.

8. Whether recognition granted to the in-house Research & Development department(s) of the company by Department of Scientific & Industrial Research.

Yes, valid upto 31.03.2008.

9. Total cost of in-house research facility, giving break-up of expenditure on land and buildings

(Rs. in Lakhs)	
AY 2005-06	
Capital expenditure (land & buildings)	---
Capital expenditure (other than land & buildings)	---
Recurring expenditure	25.18
Total cost of In-house R&D facility	25.18
Donations/payments for sponsored research programs (receipts from MOIL) etc.	2.50
Total cost of In-house R&D facility [eligible for deduction u/s 35(2AB)]	22.68

10. Whether agreement for co-operation and Research & Development facility and for audit of the accounts maintained for that facility entered into. Yes.

Certified that the above information is true to the best of our knowledge and belief.

(R.R. ABHYANKAR)  
Scientist 'G'

(For and on behalf of Secretary, DSIR)

Place: New Delhi  
Date: 4-August 2006

DSIR Ref.  
File No. TU/IV-15(166)/2005  
Order in Form 3CM No. TU/IV-15(166)/35(2AB)/3CM/104/2006  
3CL No. TU/IV-15(166)/35(2AB)/3CL/242/2006

To: The Director General of Income Tax (Exemptions), District Centre, 2<sup>nd</sup> Floor, Plot No. 15, Lakshmi Nagar, Delhi - 110092



From From-3CL, we find that the total expenditure incurred for in-house R & D facility eligible for deduction U/s. 35(2AB) is Rs. 22.68 Lakhs. The amount has been claimed U/s. 35(1) of the Act

as deduction by the assessee while filing the revised return of income. The pleading of the Ld. AR is that the actual expenditure which was not disputed by the Revenue and which is certified by the Ministry of Science and Technology may be allowed during the impugned assessment year without any weighted deduction deserves consideration. We therefore are of the view that given the facts and circumstances of the case, since the amount certified by the Ministry of Science and Technology, Government of India in Form-3CL amounting to Rs. 22.68 Lakhs corresponds with the claim made by the assessee while filing the return of income, we direct the Ld. AO to allow the actual expenditure incurred by the assessee for in-house R & D facility. Accordingly, these grounds raised by the assessee are allowed.

6. Since, Grounds No. 1 & 3 are decided in favour of the assessee, Ground No.2 and the additional ground raised by the assessee needs no adjudication.

7. In the result, appeal filed by the assessee is allowed.

**ITA No. 432/Viz/2012**  
**(AY 2007-08)**

8. This appeal filed by the assessee against the order of the Ld. CIT(A), Visakhapatnam dated 28/09/2012.

9. In this appeal, the assessee has raised the following grounds of appeal:

1. *The Ld. CIT(A), Visakhapatnam erred in confirming the order of the Ld. AO in disallowing entire weighted deduction to the extent of Rs. 1,05,85,292/- claimed U/s. 35(2AB) of the Act on the ground that appellant was not carrying on research activity at the address [9-30-4, Balaji Nagar, Siripuram, Visakhapatnam-530003] mentioned in Form 3CL / 3CM issued by the Department of Science & Industrial Research (DSIR), Ministry of Science and Technology, Government of India, but incurred part of the expenditure at Kalunga, Rourkela. Such disallowance has resulted in additional tax liability and interest thereon.*
2. *Even assuming (without admitting) that appellant was not eligible for weighted deduction U/s. 35(2AB) in respect of R&D expenditure towards field trials incurred at Rourkela (on the ground that the same was not covered under the definition of approved in-house R & D house and this is presently the subject matter of litigation before the Hon'ble AP High Court), the Ld. AO was not justified in denying even the plain 100% deduction for R & D expenditure in respect of both revenue and capital expenditure as provided U/s. 35(1)(i) and (iv) read with section 35(2)(ia) of the Act which does not provide for any such conditionality. Therefore the Ld. CIT (A) erred in confirming the order of Ld. AO and ought to have at least allowed 100% deduction U/s. 35(1)&(iv) read with section 35(2)(ia) amounting to Rs. 54,24,406/- instead of the weighted deduction U/s. 35(2AB) as claimed by appellant.*
3. *Any other ground that the appellant may urge at the time of hearing."*

10. Further, the assessee has also raised **additional ground** vide its petition dated 22/11/2016 which reads as under:

*"On the facts and circumstances of the case, whether the expenditure incurred by the appellant towards the Research and Development is eligible for deduction U/s. 35(1)(iv) of the Act?"*

11. Grounds No. 1 & 2 raised by the assessee in this appeal are identical to that of the Grounds No. 1 & 3 of the assessee's appeal for the AY 2005-06. Therefore, our decision given while adjudicating the Grounds No. 1 & 3 of the assessee's appeal for the AY 2005-06 *mutatis mutandis* applies to the Grounds No. 1 & 2 of the assessee's appeal for the AY 2007-08 also. Accordingly, these grounds raised by the assessee are allowed.

12. Ground No.3 is general in nature and need no adjudication.

13. Since Grounds No. 1 & 2 raised by the assessee are adjudicated in favour of the assessee, the additional ground raised by the assessee needs no adjudication.

14. In the result, appeal of the assessee is allowed.

15. Ex-consequenti, both the appeals filed by the assessee are allowed.

Pronounced in the open Court on 28<sup>th</sup> February, 2024.

Sd/-

(दुव्वूरु.एलरेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एसबालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated :28.02.2024

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-M/s. Arrdy Engineering Innovations (P) Ltd (Formerly known as M/s. Ardee Technologies (P) Ltd.k, BB-8 Area 7 & 8, Civil Township, Rourkela.
2. राजस्व/The Revenue -Asst. Commissioner of Income Tax, Circle-3(1), Infinity Tower, Shankaramatham Road, Santhipuram, Visakhapatnam, Andhra Pradesh - 530016.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam